

INDEXDEPONENT Joseph M. Howard, Jr.PAGEDIRECT EXAMINATION BY  
MR. GRUNERT 9CROSS-EXAMINATION BY  
MS. REIMER 283

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
C.A. No. 04-11836RCL

\_\_\_\_\_  
TRANS-SPEC TRUCK SERVICE, INC. )  
D/B/A TRUCK SERVICE, )  
Plaintiff )  
vs. )  
CATERPILLAR, INC., )  
Defendant )  
\_\_\_\_\_

AUDIOVISUAL DEPOSITION OF JOSEPH  
M. HOWARD, JR., a witness called on  
behalf of the Defendant, pursuant to  
Massachusetts Rules of Civil Procedure,  
before Susan E. Wilson, Registered  
Professional Reporter and Notary Public  
in and for the Commonwealth of  
Massachusetts, at the Law Offices of  
Campbell, Campbell, Edwards & Conroy,  
One Constitution Plaza, Boston,  
Massachusetts, on Tuesday, May 3, 2005,  
commencing at 9:43 a.m.

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Also Present:

William Barton, Videographer

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	Sterling Specification Proposal 3/23/99	103
2	Sterling Summary Quotation	124
3	On-Highway Vehicle Engine Extended Service Coverage	140
4	Letter Dated March 24, 2005	140
5	Caterpillar Limited Warranty	144
6	Caterpillar Limited Warranty	144
7	Flywheel Housing Replaced	148
8	Sterling Truck Number Assignment	163
9	Documents Pertaining to Truck 6000	188
10	Documents Pertaining to Truck 6100	188
11	Documents Pertaining to Truck 6200	188
12	Documents Pertaining to Truck 6300	188

13

Demand, and I'm going to hand a copy to your counsel for her convenience because I have some questions about this document and some of the averments in it.

Before I get to those specific averments, let me ask you whether there came a time in early 1999 when you reached a conclusion that Trans-Spec should acquire some new trucks?

**A. Just normal business.**

**Q.** So is the answer that sometime in 1999, you did reach a conclusion that Trans-Spec should acquire some new trucks?

**A. We purchase trucks every year.**

**Q.** Is the answer that sometime in early 1999, you reached the conclusion that Trans-Spec should acquire some trucks?

**A. Some more trucks.**

**Q.** When was it that you decided that Trans-Spec should go into the marketplace in 1999 and acquire some

14

trucks?

**A. I believe it was March.**

**Q.** March. And at that time when you reached that conclusion, how many trucks did Trans-Spec own?

**A. Approximately 44. And maybe 80 trailers, 90 trailers, somewhere in there.**

**Q.** Of the approximately 44 trucks, were some of those pickup trucks or light-duty trucks?

**A. No.**

**Q.** Those were 44 trucks of a type designed to haul cargo of some type?

**A. Yes.**

**Q.** When you decided that you were going to acquire some additional trucks in 1999, was it your plan to dispose of some of the 44 trucks that you had?

**A. Yes.**

**Q.** In fact, after you acquired the trucks that are involved in this case, did you dispose of some of those 44 trucks?

**A. Yes.**

15

**Q.** How many?

**A. At which occasion?**

**Q.** Let me ask a different question. During the year 1999, did you dispose of any of those 44 trucks, you meaning Trans-Spec?

**A. Yes.**

**Q.** How many of those 44 trucks did Trans-Spec dispose of during the year '99?

**A. 21.**

**Q.** Who did you sell them to? Who did Trans-Spec sell them to?

**A. Minuteman Trucks.**

**Q.** Were those 21 trucks, in effect, traded in as part of the purchase price for the trucks that are involved in this case?

**A. Yes.**

**Q.** Were any of those trucks equipped with Caterpillar engines?

**A. Yes.**

**Q.** What kinds of Caterpillar engines were they equipped with?

**A. 3176, C-12, 3406C. I believe that was it.**

16

**Q.** How many of those 21 trucks were equipped with engines that were not Caterpillar engines?

**A. I'm not sure any of them were.**

**Q.** How many of those trucks were equipped with Caterpillar C-12 engines?

**A. I have to correct that. C-12 engines we held on to for another couple of years. 3176 primarily, and some 3406C engines.**

**Q.** Is it your corrected testimony that of the 44 trucks that Trans-Spec owned in early 1999, some of those trucks were equipped with C-12 engines and none of the trucks equipped with C-12 engines were disposed of during the year 1999?

**A. Correct.**

**Q.** Of the 44 trucks that Trans-Spec owned in early 1999, how many of them were equipped with C-12 engines?

**A. Repeat the question.**

**Q.** Of the 44 trucks that Trans-Spec owned in early 1999, how many of them were equipped with C-12 engines?

**A. Seven.**

33

1 Q. Now, turning to your conversation with  
2 Mr. Bigliozi, other than telling him  
3 that he would come up with some numbers  
4 for you, did Mr. Bigliozi tell you  
5 anything else during that conversation?  
6 A. **I don't believe so.**  
7 Q. Other than telling Mr. Bigliozi that  
8 you wanted 22 trucks of the same kind  
9 you had already and that you wanted to  
10 trade 21 trucks, did you give him any  
11 information concerning Trans-Spec's  
12 needs during that first conversation  
13 with Mr. Bigliozi?  
14 A. **I basically told him what trucks we have**  
15 **and I want to replace the trucks with**  
16 **specifications similar to what we have.**  
17 Q. Did you tell him anything else?  
18 A. **No. I might have changed a few specs.**  
19 Q. Do you remember whether you did or not?  
20 A. **I gave him a choice of two models along**  
21 **with Mr. Gustufson. One was the FLD**  
22 **112SD and the other was an FL 112. I**  
23 **gave him a choice of C-12, 60 Series**  
24 **Detroit, or M11 Cummins. I wanted a**

34

1 **hundred percent Rockwell components, a**  
2 **10-C transmission, 46,000 pound rear**  
3 **ends, 12,000 pound front end, 7/16**  
4 **frame.**  
5 Q. You mean 7/16-inch frame?  
6 A. **7/16-of-an-inch, right. 185-inch**  
7 **wheelbase, dark interior with no rugs.**  
8 **I can go on and on and on about the**  
9 **little things on the truck, but those**  
10 **are the major components on this truck.**  
11 Q. In the first conversation you had with  
12 Mr. Gustufson when you called him up and  
13 said you wanted to acquire 22 new  
14 trucks, in addition to that, you gave  
15 him the information you have just  
16 recounted?  
17 A. **Yes.**  
18 Q. And you gave the same information to Mr.  
19 Bigliozi?  
20 A. **Yes.**  
21 Q. Were you working from some document in  
22 this conversation?  
23 A. **No.**  
24 Q. So you had this information in your head

35

1 as to what you wanted on these trucks?  
2 A. **Yes.**  
3 Q. With respect to the two model trucks  
4 that you suggested to them, had you gone  
5 out and obtained any documentary-type  
6 information concerning those model  
7 trucks?  
8 A. **No. We had both.**  
9 Q. With respect to the three engine types  
10 that you proposed to Mr. Gustufson and  
11 Mr. Bigliozi, had you gone out and  
12 obtained any documentary information of  
13 any type concerning any of those three  
14 engine types?  
15 A. **No. Not specifically, no.**  
16 Q. Before you spoke with Mr. Gustufson and  
17 Mr. Bigliozi, what research or  
18 inquiries had you carried out to learn  
19 about the characteristics of the three  
20 engine types you mentioned, namely, the  
21 C-12, the 60 Series Detroit or the M11  
22 Cummins?  
23 A. **Basically, history of other companies.**  
24 Q. What do you mean "history of other

36

1 companies"?  
2 A. **Other companies using these vehicles,**  
3 **using competitive vehicles with**  
4 **different power trains in them.**  
5 Q. How had you obtained that information?  
6 A. **We had one of the largest repair**  
7 **facilities around besides our trucking**  
8 **company, and we fix -- we have 3600**  
9 **customers so we have all the information**  
10 **that we need.**  
11 Q. So the source of the information  
12 concerning other companies' experience  
13 with those three engine types was the  
14 truck repair business that Trans-Spec  
15 operated?  
16 MS. REIMER: Objection.  
17 A. **Correct.**  
18 Q. Was there any source other than what you  
19 learned from those customers?  
20 A. **We also had all of these engines**  
21 **ourselves, all three of these engines**  
22 **ourselves.**  
23 Q. Other than the information from  
24 customers of the truck repair business

37

39

1 and from your own experience with  
2 engines of these types, was there any  
3 other source of information that you had  
4 about those three engine types before  
5 you called up Mr. Gustufson and Mr.  
6 Bigliozzi and gave them these  
7 requirements that you have described?

8 **A. We have -- I have met all the**  
9 **representatives of all the different**  
10 **companies.**

11 **Q.** Had you, before March of 1999, had any  
12 specific discussions with  
13 representatives of Cummins Engine  
14 Company concerning the M11 engine?

15 **A. Yes.**

16 **Q.** And where had that conversation or those  
17 conversations taken place?

18 **A. Cummins North Atlantic in Dedham,**  
19 **Massachusetts.**

20 **Q.** Who had you discussed them with at that  
21 location?

22 **A. The sales rep at that time was Walter**  
23 **Brisco. The owner was Dave Letz.**

24 **Q.** How do you spell Dave's last name?

38

1 **A. L-E-T-Z, I believe.**

2 **Q.** With respect to the 60 Series Detroit  
3 engines, who had you talked to about  
4 those engines?

5 **A. Walter Brisco.**

6 **Q.** Also at Cummins North Atlantic?

7 **A. No. He left there and went to Power**  
8 **Products in Wakefield, Massachusetts.**

9 **Q.** Who had you discussed the C-12 engine  
10 with before March of 1999?

11 **A. Harry Calderbank and Al Cardoza.**

12 **Q.** Before March 1999, had either Mr.  
13 Calderbank or Mr. Cardoza given you any  
14 documentary information concerning C-12  
15 engines?

16 **A. Yes.**

17 **Q.** What information had they given you?  
18 What documents had they given you?

19 **A. Information on torque rise, horsepower.**

20 **Q.** They had given you that information in  
21 documentary form?

22 **A. Yes.**

23 **Q.** Does Trans-Spec still have the  
24 information that they gave you in

1 documentary form?

2 **A. No.**

3 **Q.** Which of the two was it that gave you  
4 information in documentary form on  
5 torque rise and horsepower of the C-12  
6 engine before March of 1999?

7 **A. Actually, we did have some documentary**  
8 **which I believe -- everything we had we**  
9 **have given to our attorneys.**

10 **Q.** My question is, which of Mr. Cardoza or  
11 Mr. Calderbank was it who gave you,  
12 before March of 1999, documentary  
13 information on the torque rise and  
14 horsepower of the C-12 engine?

15 **A. Mr. Calderbank.**

16 **Q.** When did Mr. Calderbank give you those  
17 documents?

18 **A. All the time as they updated them.**

19 **Q.** Would he send them to you in the mail?

20 **A. Primarily, we would get together.**

21 **Q.** Did the documents that Mr. Calderbank  
22 gave you concerning the C-12 engine  
23 prior to March 1999 have any particular  
24 title? Were they any type of documents

40

1 that you can identify?

2 **A. I think they were called brochures.**

3 **Q.** Just C-12 engine brochures?

4 **A. Yes.**

5 **Q.** When the C-12 engine would be updated in  
6 some fashion, he would give you a  
7 brochure and say there has been an  
8 update on the C-12 engine?

9 **A. I don't believe there was an update on**  
10 **C-12. When they come up with new**  
11 **products, he would explain the new**  
12 **products to me.**

13 **Q.** Did Mr. Calderbank give you brochures  
14 relating to C-12 engines on more than  
15 one occasion before March of 1999?

16 **A. Yes.**

17 **Q.** How often?

18 **A. Actually, first, he told us about the**  
19 **engine.**

20 **Q.** That's fine. But how often did he give  
21 you brochures concerning the C-12 engine  
22 before March 1999?

23 **A. They only have so many brochures.**

24 **Q.** How often did he give you brochures

65

1 I'm a very faithful person, and I really  
2 had to take all of this under  
3 consideration.  
4 **Q.** What research did you do the next day in  
5 order to learn that Hartford was not  
6 within Southworth Milton's district?  
7 **A.** I believe I called Harry Calderbank.  
8 **Q.** What did you say to him and what did he  
9 say to you?  
10 **A.** I was -- at that point, I think I had  
11 called Harry on concessions of the  
12 multiple purchase of Caterpillar engines  
13 versus the M11 Cummins. And Harry  
14 informed me that -- and I'm not even  
15 sure if this was before or after the  
16 conversation with Kevin Holmes, but he  
17 informed me that Hartford wasn't in his  
18 district, that I would have to deal with  
19 New Haven.  
20 **Q.** Did he tell you the company that you  
21 would have to deal with if you bought  
22 these trucks in Connecticut?  
23 **A.** Well, I know the Caterpillar dealer in  
24 New Haven. I can't even think of the

66

1 name.  
2 **Q.** H.O. Penn?  
3 **A.** Yes. That is what it was.  
4 **Q.** Did Mr. Calderbank tell you that if you  
5 purchased these trucks from the  
6 Connecticut dealership that you would  
7 have to deal with H.O. Penn in terms of  
8 servicing for the engines?  
9 **A.** Yes. Or warranty for the engines or  
10 concessions for the engines. Anything  
11 about the engine, he couldn't help me.  
12 He could fix them. He could fix  
13 anybody's Caterpillar, but he couldn't  
14 offer any assistance on the financial  
15 arrangement.  
16 **Q.** You mentioned having talked with Mr.  
17 Calderbank about concessions on  
18 purchasing multiple engines relative to  
19 the Cummins engine. Tell me about that  
20 conversation. What did you say and what  
21 did he say?  
22 **A.** I really don't recall the exact  
23 conversation, but it was about  
24 performance, about weight, about the

67

1 **warranty, the cost of warranty, the**  
2 **discounting and, of course, who would**  
3 **stand behind their warranty the best.**  
4 **Q.** In the conversation with Mr. Calderbank  
5 comparing the Cummins M11 and the C-12,  
6 what did he tell you about relative  
7 performance?  
8 **A.** He showed me comparison charts between  
9 the two engines, economy charts. The --  
10 **Q.** I'm sorry. I interrupted you. Finish  
11 your answer.  
12 **A.** I was primarily done. I wanted it to be  
13 Caterpillar.  
14 **Q.** Did you keep those charts that he showed  
15 you?  
16 **A.** No. No. Not that long.  
17 **Q.** What do you remember them showing that  
18 was of interest to you?  
19 **A.** Torque curve, actual power, gross  
20 horsepower, grade ability versus  
21 economy. One of the big things that he  
22 was selling was the cleanliness of the  
23 Caterpillar versus the Cummins. I  
24 believe he said the Cummins is the --

68

1 **M11 is the dirtiest engine on the**  
2 **market.**  
3 **Q.** Does that mean it has high emissions?  
4 **A.** I think, internally, soot. Soot in the  
5 oil, if you do an oil analysis.  
6 **Q.** Anything else that you remember him  
7 telling you about relative performance  
8 of the Cummins engine and the C-12?  
9 **A.** He knew I wanted to be talked out of it.  
10 So it really wasn't a heated  
11 conversation of any kind. I wanted to  
12 be talked out of it. I wanted him to  
13 match what they were trying to sell me.  
14 **Q.** Have you given me your best memory of  
15 the information that Mr. Cummins gave  
16 you in the conversation that you had  
17 with him comparing the M11 Cummins  
18 engine to the C-12?  
19 MS. REIMER: Objection  
20 as to form.  
21 **A.** I didn't quite understand it.  
22 MS. REIMER: You got the  
23 wrong name in there.  
24 **Q.** Have you given me your best and most



1 complete memory of your conversation you  
2 had with Mr. Calderbank comparing the  
3 Cummins engine and the C-12 engine?  
4 **A. Yes.**  
5 **Q.** He also talked to you about relative  
6 weights of the two engines?  
7 **A. Yes.**  
8 **Q.** C-12 was lighter?  
9 **A. No.**  
10 **Q.** C-12 was heavier?  
11 **A. He said they were the same. There was**  
12 **about 60 pounds difference.**  
13 **Q.** What did he tell you about relative  
14 warranties?  
15 **A. They were the same.**  
16 **Q.** Did he describe the warranties other  
17 than just telling you that they were the  
18 same?  
19 **A. I believe he called it a serious**  
20 **nucleus, and he gave us literature**  
21 **showing everything that it covered.**  
22 **Q.** Was so-called serious nucleus coverage  
23 something that you had on other  
24 Caterpillar engines that you already

1 you if that is the serious nucleus  
2 coverage that you understood Mr.  
3 Calderbank to be talking about. It's a  
4 two-sided document.  
5 **A. All I really remember is I did see a**  
6 **list of numbers on a page, and this**  
7 **would have been explained to me, and**  
8 **then Andy would have -- he is my**  
9 **technical guy -- he would have taken it**  
10 **from there.**  
11 **Q.** Andy Lind?  
12 **A. Yes.**  
13 **Q.** The document that I have shown you that  
14 says on the front of it On Highway  
15 Vehicle Engine Extended Service  
16 Coverage, is that a form of document  
17 that Mr. Calderbank showed you in  
18 connection with these conversations he  
19 was having with you concerning --  
20 **A. He never showed me a document.**  
21 **Q.** You had seen a document of this type  
22 before in connection with your other  
23 Caterpillar engines, correct?  
24 **A. I don't remember ever seeing it. I**

1 owned?  
2 **A. Everything, yes.**  
3 **Q.** Technically speaking, it was an extended  
4 service contract that you purchased,  
5 correct?  
6 **A. Yes.**  
7 **Q.** When I say that you purchased, either  
8 you purchased it by paying money or you  
9 got it as part of the overall  
10 transaction whereby you purchased the  
11 truck with the Caterpillar engine in it?  
12 **A. Yes. Had a figure -- had a cost figure**  
13 **on it. If you didn't want it and wanted**  
14 **the money, I don't think they would give**  
15 **it to you. No. It did have a cost**  
16 **figure. It had a value.**  
17 **Q.** Let me just show you a document. What I  
18 have got is a package of documents  
19 contained with a letter from your  
20 attorneys. I'm just going to hand it to  
21 you in that form. But I will ask you to  
22 look at the third page of the document,  
23 third page, including the first page,  
24 which is your attorney's letter, and ask

1 **possibly could have, but I don't recall**  
2 **it.**  
3 **Q.** In the conversation that you had with  
4 Mr. Calderbank concerning the warranty,  
5 relative warranties as to the Cummins  
6 engine or the C-12 engine, although he  
7 didn't show you the document, did he  
8 tell you what the coverage would be?  
9 **A. Yes, he did.**  
10 **Q.** What did he say?  
11 **A. He said it would be a 500,000 mile**  
12 **extended warranty.**  
13 **Q.** Did he tell you anything else?  
14 **A. He told me what it would cover and what**  
15 **it wouldn't cover.**  
16 **Q.** What did he tell you on that subject?  
17 **A. All the heavy parts after a certain**  
18 **time. I don't believe it would cover --**  
19 **on the extended it wouldn't cover a**  
20 **turbocharger or injector or an ECM or**  
21 **something like that, but as far as the**  
22 **internal combustion parts, pistons,**  
23 **valves, crankshaft, timing gears,**  
24 **totally everything.**

1 Holmes' Tri-State nor from Mr.  
2 Biglioizzi's company, correct?  
3 MS. REIMER: Objection.  
4 **A. Correct.**  
5 **Q.** What next occurred in connection with  
6 your effort to acquire these 22 trucks?  
7 **A. Coincidentally, we had a visit from a**  
8 **salesman that once worked for a**  
9 **Peterbilt dealer in New Hampshire that**  
10 **now worked for Minuteman Trucks. He**  
11 **just happened to walk in the door.**  
12 **Q.** Is that Mr. Medbery?  
13 **A. Donald Medbery, yes. I'm not sure if he**  
14 **had heard of the deal or what we were**  
15 **looking for or if he just coincidentally**  
16 **walked in, but he had ran into Andy, and**  
17 **Andy called me. I wasn't there, and he**  
18 **told me that -- I think Andy told him**  
19 **the deal between -- the possible deal**  
20 **that we had with Lindy Biglioizzi, and he**  
21 **said, "I'll match it."**  
22 **Q.** What did you say?  
23 **A. Well, I wasn't there, so I said, "Let's**  
24 **get together," and so we -- that's when**

1 **I started speccking out Sterlings, which**  
2 **were an entirely different truck.**  
3 **Q.** When you say you started speccking them  
4 out, what did you do to spec out the  
5 Sterlings?  
6 **A. I had to tell him basically the same**  
7 **specs that I had told all the other**  
8 **dealers.**  
9 **Q.** So you were sitting with him in your  
10 office and you gave him a description of  
11 your needs or desires, just as you had  
12 with Mr. Gustufson, Mr. Biglioizzi and  
13 the others?  
14 **A. I think he came over -- he came to my**  
15 **house and we sat in a private -- where I**  
16 **would do a lot with different people, if**  
17 **I didn't want to be bothered.**  
18 **Q.** You met with him at 7 Cristo Lane?  
19 **A. Yes.**  
20 **Q.** In any event, this was a face-to-face  
21 meeting?  
22 **A. Yes.**  
23 **Q.** Did he bring any documents with him?  
24 **A. I don't recall that.**

1 **Q.** What did he tell you he could do for  
2 you, or would do for you?  
3 **A. Match the deal.**  
4 **Q.** So you described the offer that you had  
5 for Mr. Biglioizzi, and he said Minuteman  
6 would match that deal?  
7 **A. Yes.**  
8 **Q.** What other information was exchanged in  
9 that meeting?  
10 **A. I don't recall. I think that was**  
11 **primarily it.**  
12 **Q.** Did he tell you what specific equipment  
13 would be on the Sterling trucks that you  
14 were talking about buying?  
15 **A. Whatever would be on the other ones**  
16 **would be on -- it would be the same**  
17 **equipment on either.**  
18 **Q.** Did you discuss engines with him  
19 specifically?  
20 **A. There's different people you discuss**  
21 **different things with. Mr. Medbery**  
22 **isn't a mechanic.**  
23 **Q.** Did you discuss engines with him?  
24 **A. What I would like in a truck, yes.**

1 **Q.** What did you tell him you wanted in  
2 terms of engines? Did you say you  
3 wanted a C-12 engine, or did you give  
4 him the three options you gave the other  
5 people?  
6 **A. I believe I gave him the three options.**  
7 **Q.** Did he tell you specifically which of  
8 those options Minuteman would include in  
9 its offer?  
10 **A. They were, I believe, pushing**  
11 **Caterpillar.**  
12 **Q.** Mr. Medbery was?  
13 **A. He appeared to be. I'm not sure if he**  
14 **did or he didn't, but he seemed to like**  
15 **the Caterpillar.**  
16 **Q.** Do you remember what he told you about  
17 it?  
18 **A. Well, when you are dealing with engine**  
19 **or component manufacturers when you are**  
20 **purchasing a truck, as far as discounts**  
21 **or concessions, you have to go through**  
22 **the salesperson who goes through the**  
23 **manufacturer. Then the manufacturer, he**  
24 **discounts a truck based on how many you**

81

1 **are going to purchase.**

2 And after they are all  
3 done, then, you know, I can do my magic.  
4 Or it isn't magic, but I can do my thing  
5 and try to get a little more.

6 **Q.** I don't understand what you mean by  
7 that.

8 **A.** Well, come out with a price of a truck  
9 with one component versus, for example,  
10 a Rockwell transmission versus an Eaton  
11 transmission. They are different  
12 prices. They are close. Everybody is  
13 competitive, but a Cummins versus a  
14 Detroit versus a Caterpillar engine on  
15 price, there's a lot of considerations.

16 And the biggest thing is  
17 warranty, but they are all pretty much  
18 the same. Another thing is weight. And  
19 basically, an engine is only as good as  
20 the dealer, whether it be the engine  
21 dealer or the truck dealer, selling the  
22 product. And I wanted Caterpillar for  
23 that reason.

24 I had already been

82

1 through Cummins a few times, and there  
2 were new people which seemed to be  
3 better, but we have a history with  
4 Caterpillar. We wanted the Caterpillar.

5 Mr. Medbery was given  
6 that information and he tried to obtain  
7 pricing. Even though he said he would  
8 match it, of course, I wanted him to do  
9 better, so he attempted to do better.

10 And he had to get everything approved  
11 from the owners. He couldn't say, yes,  
12 this is the deal, sign up \$1.6 million,  
13 so we had to go through all the  
14 rigamarole, you know, through it again.

15 And the trucks were  
16 totally different, different models,  
17 different -- like the BC on a Sterling,  
18 it's 122 inches. And a BC on a  
19 Freightliner is 120 or 112. So we had  
20 to take into our -- for our specific  
21 use, we had to look at the truck  
22 entirely different.

23 **Q.** What is the BC?

24 **A.** The nose that sticks out beyond the cab.

83

1 **Q.** When you finished your meeting with Mr.  
2 Medbery at your home where you and he  
3 discussed these trucks and you told him  
4 to match the offer you had or make a  
5 better offer, did he leave you with any  
6 documents? Did he leave you with a  
7 proposal?

8 **A.** I don't recall.

9 **Q.** After that meeting what was your next  
10 communication with Mr. Medbery or anyone  
11 else from Minuteman concerning this  
12 transaction?

13 **A.** I think the owner came to see me.

14 **Q.** What was his name?

15 **A.** Richard Wicher.

16 **Q.** Did he come see you at your home or some  
17 other business location of Trans-Spec?

18 **A.** My business location.

19 **Q.** What business locations did Trans-Spec  
20 have back at that time other than 7  
21 Cristo Lane?

22 **A.** 307 Hartford Turnpike, Shrewsbury.

23 **Q.** Did it have any others?

24 **A.** The 22 Eskow Road was the main one in

84

1 **Worcester.**

2 **Q.** Did it have any others?

3 **A.** No. It owns other property, but as far  
4 as occupying it, that's it.

5 **Q.** What other property did Trans-Spec own  
6 in 1999?

7 **A.** 103 Creeper Hill Road in North Grafton.

8 **Q.** But it didn't have a place of business  
9 at that location?

10 **A.** No. It was a previous terminal that we  
11 had outgrown.

12 **Q.** What other -- let me put it this way.  
13 What other property did Trans-Spec own  
14 that it was using in its business back  
15 in 1999?

16 **A.** 21 Eskow Road, 22 Eskow Road.

17 **Q.** 22. Are they across the street from  
18 each other?

19 **A.** Yes.

20 **Q.** So were its business locations back at  
21 that time the Cristo Lane address, the  
22 307 Hartford Turnpike, and 21 and 22  
23 Eskow Road?

24 **A.** Yes.



85

- 1 Q. In any event, Mr. Wicher came to see you  
2 at 22 Eskow Road?
- 3 A. **Yes.**
- 4 Q. Between Mr. Medbery's visit to you where  
5 Mr. Medbery made his pitch and when Mr.  
6 Wicher came to see you at Eskow Road,  
7 did you talk with Mr. Calderbank about  
8 the transaction?
- 9 A. **Not at that time.**
- 10 Q. Did you talk with anybody from  
11 Southworth about the transaction between  
12 when Mr. Medbery first came to see you  
13 and when Mr. Wicher came to see you?
- 14 A. **I did. After I met Mr. Wicher, I did.**
- 15 Q. I'm asking now about the period between  
16 when you first met Medbery and when you  
17 first met Mr. Wicher, did you speak with  
18 anyone from Southworth during that  
19 period of time about this transaction?
- 20 A. **I don't recall.**
- 21 Q. About how much time passed between  
22 Medbery's visit and Wicher's visit?
- 23 A. **I don't recall that either.**
- 24 Q. Was it a matter of days or weeks?

86

- 1 A. **I think it was days.**
- 2 Q. Did anybody come with Mr. Wicher?
- 3 A. **I believe he brought his parts man with**  
4 **him.**
- 5 Q. Who was that?
- 6 A. **I don't recall.**
- 7 Q. Did anyone participate with you in this  
8 meeting with Mr. Wicher and his parts  
9 man?
- 10 A. **Andy.**
- 11 Q. Mr. Lind?
- 12 A. **Yes.**
- 13 Q. Tell me what was said at that meeting?
- 14 A. **We just listened.**
- 15 Q. What did Mr. Wicher and his parts man  
16 tell you?
- 17 A. **How they could deliver parts every day,**  
18 **how we could help them with the**  
19 **warranty, small issues on trucks. The**  
20 **windshield wiper motor, you wouldn't**  
21 **want to have to drive a truck 50 miles**  
22 **to have a windshield wiper switched or a**  
23 **power window switched, so they would**  
24 **sublet back to us.**

87

- 1 Q. Trans-Spec could do some of the warranty  
2 work itself and get reimbursed for it?
- 3 A. **Right.**
- 4 Q. What else did they tell you as you  
5 listened?
- 6 A. **Well, they wanted to sell us parts as**  
7 **much as they wanted to sell us trucks.**  
8 **We purchased a lot of parts.**
- 9 Q. When you said they wanted to sell you  
10 parts, you mean they wanted to sell you  
11 parts for the trucks that you already  
12 had?
- 13 A. **No. The whole company. We buy possibly**  
14 **\$50,000 a month in parts.**
- 15 Q. They wanted to sell you parts to use in  
16 the truck repair portion of your  
17 business?
- 18 A. **Yes.**
- 19 Q. So this was not just a pitch to sell you  
20 22 Sterling trucks, it was a pitch to  
21 sell you a lot of other product as well?
- 22 A. **Yes.**
- 23 Q. What did they tell you about the  
24 Sterling trucks they were proposing to

88

- 1 sell beyond what you told me about  
2 helping with the warranty and about how  
3 they could deliver parts every day?
- 4 A. **It was primarily just price, pricing**  
5 **issue on that. A truck is a component**  
6 **vehicle. It has a cab, whether it be**  
7 **the Freightliner or International or**  
8 **Kenworth or Peterbilt, and then it has**  
9 **similar frame rails which could be by**  
10 **different manufacturers, but they are**  
11 **the same. They are two straight rails.**  
12 And then they put front  
13 axles which are either Eaton or  
14 Rockwell, a transmission either could be  
15 Eaton or Rockwell again, maybe Spicer,  
16 and rear ends could be two or three  
17 different manufacturers but it's all  
18 components. But it's the same thing.
- 19 Q. Did you discuss with Mr. Wicher the  
20 components that they would put on these  
21 Sterling trucks that you were talking  
22 about buying?
- 23 A. **No. Not really.**
- 24 Q. Not at that meeting at least?

89

1 **A. No.**  
 2 **Q.** What specifications for the trucks did  
 3 Mr. Wicher propose to you at that  
 4 meeting?  
 5 **A. Mr. Wicher is not a nuts-and-bolts-type**  
 6 **guy. He talks numbers. Numbers and**  
 7 **service.**  
 8 **Q.** Is the answer that there were no  
 9 specific specifications for the trucks  
 10 presented to you at that meeting?  
 11 **A. Yes.**  
 12 **Q.** What happened next after that meeting in  
 13 terms of your pursuing the purchase of  
 14 these 22 trucks?  
 15 **A. I believe his brother came to see us**  
 16 **next.**  
 17 **Q.** What was his name?  
 18 **A. Bill Wicher.**  
 19 **Q.** Did Bill Wicher bring anyone with him?  
 20 **A. I believe maybe the parts guy came with**  
 21 **him and not with Richard Wicher.**  
 22 **Q.** Did anyone else come with him?  
 23 **A. I'm not sure if Medbery was probably**  
 24 **with him. I'm not sure of that.**

90

1 **Q.** From Trans-Spec's side, was it you and  
 2 Mr. Lind again?  
 3 **A. Yes.**  
 4 **Q.** Was anyone else at the meeting?  
 5 **A. I don't believe so.**  
 6 **Q.** Between meeting with Richard Wicher and  
 7 Bill Wicher, what communications did you  
 8 have with Southworth, either Mr.  
 9 Calderbank or any other Southworth  
 10 employee, concerning this transaction?  
 11 **MS. REIMER: Objection.**  
 12 **A. I really don't recall, but it was -- I**  
 13 **did fill Harry Calderbank in about the**  
 14 **Sterling trucks.**  
 15 **Q.** What did you tell him?  
 16 **A. I just told him that I was looking at**  
 17 **Sterlings because of the political**  
 18 **position that I was put in and I didn't**  
 19 **want to hurt anybody. And Harry thought**  
 20 **that was great. He said they are good**  
 21 **people. It's a good dealer.**  
 22 **Q.** Talking about Minuteman?  
 23 **A. Yes.**  
 24 **Q.** Did Mr. Calderbank say anything else?

91

1 **A. Not really.**  
 2 **Q.** Tell me what happened in the meeting  
 3 with Bill Wicher and maybe Mr. Medbery,  
 4 maybe the parts man, you and Mr. Lind?  
 5 **A. Well, Bill Wicher is a parts guy. He is**  
 6 **not a nut-and-bolt-type guy that you can**  
 7 **ask him differences in products. He can**  
 8 **tell you what a product is going to**  
 9 **cost, what he can do for you, the**  
 10 **computer system that you are required to**  
 11 **have a -- to deal with them on the order**  
 12 **over the Internet and that was primarily**  
 13 **it.**  
 14 **Q.** He was there to talk to you about the  
 15 proposal that Minuteman become a parts  
 16 supplier to Trans-Spec?  
 17 **A. Right. He was a dealer for Alliance**  
 18 **which was part of -- a subsidiary of**  
 19 **Freightliner. And it's a parts network**  
 20 **that sells -- I don't know if it's**  
 21 **worldwide, but certainly the biggest in**  
 22 **the nation now, and we could actually --**  
 23 **through this system, we could order**  
 24 **parts directly from Alliance.**

92

1 **Q.** Setting aside the discussion about his  
 2 desire to become a parts supplier to  
 3 Trans-Spec, what conversation about  
 4 these specific 22 trucks that you were  
 5 thinking about buying occurred at that  
 6 meeting?  
 7 **A. I don't recall, if any.**  
 8 **Q.** Did Mr. Wicher or any of the other  
 9 Minuteman employees present you with any  
 10 documents concerning the trucks that  
 11 they were talking about selling you?  
 12 **A. I don't recall. I had documents on the**  
 13 **truck itself which I did like.**  
 14 **Q.** Does Trans-Spec still have those  
 15 documents?  
 16 **A. Not from Minuteman, no.**  
 17 **MS. REIMER: John.**  
 18 **MR. GRUNERT: This would**  
 19 **be a good time to take a break anyway so**  
 20 **let's go off and you can rewind.**  
 21 **THE VIDEOGRAPHER: The**  
 22 **time is approximately 11:32 and we are**  
 23 **off the record.**  
 24 **(Recess taken.)**

93

1 THE VIDEOGRAPHER: We  
 2 are on the record. The time is  
 3 approximately 11:43. The deposition of  
 4 Mr. Joseph Howard continues on tape two.  
 5 Q. Sir, up until the date of the meeting  
 6 that we were talking about with Bill  
 7 Wicher and maybe Mr. Medbery and you and  
 8 Mr. Lind, up until that point in time,  
 9 the people that you had talked with  
 10 about the C-12 engines and what you  
 11 could get in terms of a deal for the  
 12 C-12 engines had really been Mr.  
 13 Calderbank, correct?  
 14 A. Correct.  
 15 Q. You hadn't discussed that subject with  
 16 anyone else from Caterpillar or from  
 17 Southworth, correct?  
 18 A. Correct.  
 19 Q. After the meeting with Bill Wicher where  
 20 mostly you talked about Minuteman's  
 21 desire to become a parts supplier to  
 22 Trans-Spec, what was the next event in  
 23 Trans-Spec's process of obtaining these  
 24 22 trucks it wanted?

94

1 A. That's a good question. I really -- I  
 2 think at that point we had to -- no, we  
 3 didn't arrange financing at that point.  
 4 I think just basically spec them out and  
 5 decide, you know, again on the Sterling,  
 6 which wheelbase we wanted and where we  
 7 wanted things positioned like what side  
 8 of the truck to put the fuel tank on and  
 9 batteries and little accessories.  
 10 Q. Who conducted that negotiation on  
 11 Trans-Spec's part and on Minuteman's  
 12 part?  
 13 A. It was just done by myself, and I would  
 14 talk to Andy about it.  
 15 Q. Andy Lind?  
 16 A. Yes. For example, on the Sterling, the  
 17 window crank was at the floor, so we put  
 18 power windows. I sat in the truck and  
 19 my head is resting against the window to  
 20 open the window, so we put power windows  
 21 and we wanted a few driver-creature  
 22 features. Power mirrors we wanted so  
 23 when a trailer truck backs in, you can  
 24 adjust the mirror to see.

95

1 Q. I take it then that you and Mr. Lind  
 2 spent some significant time together  
 3 talking about what the detailed  
 4 specifications for these Sterling trucks  
 5 that you wanted to buy should be; is  
 6 that correct?  
 7 A. Not -- yeah. I mean, not every day. We  
 8 probably had half a dozen five-minute  
 9 conversations.  
 10 Q. Understood. But you were working with  
 11 Mr. Lind on this project to spec out  
 12 these Sterling trucks in detail,  
 13 correct?  
 14 A. Yes.  
 15 Q. And you mentioned sitting in trucks.  
 16 Did you and Mr. Lind, or both of you, go  
 17 and look at some exemplar Sterling  
 18 trucks?  
 19 A. No.  
 20 Q. So you had brochures and pictures and  
 21 information for Sterling trucks that you  
 22 were working from; is that correct?  
 23 A. No.  
 24 Q. How did you know where the window crank

96

1 was in a Sterling truck?  
 2 A. Coincidentally, Colony Ford dropped a  
 3 truck off and wanted us to try a new  
 4 Sterling, and we had it. We didn't use  
 5 the truck, but the truck was on our  
 6 property and we checked it out really  
 7 well.  
 8 Q. So another dealership called Colony  
 9 delivered a Sterling truck to  
 10 Trans-Spec's premises essentially in an  
 11 effort to persuade you to buy trucks of  
 12 that type?  
 13 A. Yes.  
 14 Q. Did this happen after your meeting with  
 15 Bill Wicher that you discussed?  
 16 A. No. Before.  
 17 Q. You had already looked at this truck?  
 18 A. I had already seen this truck, yes.  
 19 Q. Had you had any conversations with  
 20 anyone from Colony about buying trucks  
 21 from Colony?  
 22 A. The possibility of it maybe.  
 23 Q. Had those discussions passed beyond just  
 24 the fact that you were looking for

101

103

1 about purchasing trucks from Colony, did  
2 that visit to Colony occur before your  
3 meeting with Bill Wicher?  
4 **A. Yes.**  
5 **Q.** Did you get any information concerning  
6 Sterling trucks during that meeting with  
7 Colony?  
8 **A. I don't recall.**  
9 **Q.** Did you discuss specifications for  
10 trucks that you were looking to buy at  
11 that meeting?  
12 **A. I don't recall.**  
13 **Q.** What went on at that meeting at Colony?  
14 **A. I believe I spoke to a fellow by the**  
15 **name of Lee. His last name was Lee.**  
16 **Q.** What did you say and what did he say?  
17 **A. I told him what I liked and what I**  
18 **didn't like about the truck.**  
19 **Q.** What did he say?  
20 **A. I don't really remember.**  
21 **Q.** Did you discuss the engine?  
22 **A. Probably.**  
23 **Q.** Do you remember what you said or what he  
24 said?

102

1 **A. No.**  
2 **Q.** Do you remember what you told him you  
3 liked and didn't like about the truck  
4 that they had dropped off at your  
5 premises, at Trans-Spec's premises?  
6 **A. I remember two things.**  
7 **Q.** What do you remember?  
8 **A. The window handle and the fact that you**  
9 **couldn't access the rear section of the**  
10 **engine.**  
11 **Q.** Did you discuss with him the need that  
12 Trans-Spec had to trade in a large  
13 number of trucks?  
14 **A. I did.**  
15 **Q.** And did you and he come to an agreement  
16 at that meeting that the need for that  
17 trade in made it not feasible for you to  
18 make this purchase through Colony truck?  
19 **A. I believe so.**  
20 **Q.** Was that meeting the last one that you  
21 had with anyone from Colony truck  
22 related to this purchase?  
23 **A. As I recall, I believe it was.**  
24 **Q.** Colony Truck didn't give you any

1 information about the C-12 engine,  
2 correct?  
3 **A. Correct.**  
4 **MR. GRUNERT:** Let's mark  
5 this document I showed you a few minutes  
6 ago as the first exhibit.  
7 (Document marked as  
8 Exhibit No. 1  
9 for identification.)  
10 **Q.** Sir, when did you first see the document  
11 that we marked as Exhibit 1?  
12 **A. Ten minutes ago maybe.**  
13 **Q.** Is it your testimony that that document  
14 is not a copy of a specification  
15 proposal that Trans-Spec received from  
16 Sterling?  
17 **A. From Colony Ford, you mean?**  
18 **Q.** I'm asking whether that is a  
19 specification proposal Trans-Spec  
20 received from Sterling?  
21 **A. I never received anything from Sterling**  
22 **like this.**  
23 **Q.** Is that a specification proposal that  
24 Trans-Spec ever used as the basis for

104

1 negotiations with respect to acquisition  
2 of the trucks involved in this case?  
3 **A. I -- they all look alike. I really**  
4 **can't tell if that is one of them or**  
5 **not.**  
6 **Q.** Other than the line sheet relating to an  
7 AT9513, do you remember ever receiving a  
8 line sheet from Colony in connection  
9 with Trans-Spec's wish to acquire these  
10 22 trucks that we have been talking  
11 about?  
12 **A. It's possible.**  
13 **Q.** After the meeting with Bill Wicher and  
14 Mr. Medbery at 22 Eskow Road where you  
15 and Mr. Lind were present for  
16 Trans-Spec, what next occurred in  
17 connection with Trans-Spec's pursuit of  
18 the 22 trucks that it wanted to acquire?  
19 **A. I really don't recall the next -- I**  
20 **believe it was actually speccking out in**  
21 **detail the truck that we decided we**  
22 **wanted.**  
23 **Q.** Was that done in a meeting up in Saint  
24 Thomas, Ontario?

105

1 A. No.  
 2 Q. Where was it done?  
 3 A. I believe it was done -- it's pretty  
 4 tough to say, but they generally start  
 5 off with something like this and then I  
 6 correct it.  
 7 Q. By "this" you just referred to Exhibit  
 8 1?  
 9 A. Yes, Exhibit 1.  
 10 Q. As a sort of illustrative type of  
 11 document that you would receive?  
 12 A. If I explained the basic truck that I  
 13 wanted, then they would come up with --  
 14 they would push a button and this would  
 15 come out. I would make changes, and  
 16 then they would print out another one,  
 17 and then I'd make more changes, and then  
 18 they would print out another one, and  
 19 then they would continue to make changes  
 20 until we get the exact truck that we  
 21 want.  
 22 Q. When you refer to "they," are you  
 23 talking about Minuteman?  
 24 A. Them, or any dealer.

106

1 Q. In connection with the particular trucks  
 2 that bring us here today, however, are  
 3 you talking about Minuteman?  
 4 A. Yes.  
 5 Q. Minuteman was supplying you with line  
 6 tickets or line sheets?  
 7 A. Right.  
 8 Q. With proposed specifications, and you  
 9 were then marking those up and giving  
 10 them back to Minuteman?  
 11 A. Yes. Little corrections. That's all.  
 12 Q. You were actually exchanging hard copy  
 13 paper in connection with this process?  
 14 A. No. No.  
 15 Q. How were you communicating with  
 16 Minuteman?  
 17 A. I would communicate with Don Medbery and  
 18 make the changes and verbally tell him  
 19 the changes over the phone.  
 20 Q. So you would --  
 21 A. Or in my kitchen. It could have been  
 22 anyplace, but I wasn't submitting  
 23 anything to him on paper.  
 24 Q. You would receive a line sheet from

107

1 Minuteman. You would review it probably  
 2 with Mr. Lind, maybe by yourself, and  
 3 then you would call Mr. Medbery, and you  
 4 would say, I have looked at this, and I  
 5 want these changes, and you would  
 6 itemize the changes?  
 7 MS. REIMER: Objection  
 8 as to form.  
 9 A. I would really have to explain it to  
 10 you. If I started with this Number 1,  
 11 Exhibit Number 1, as a basic, it would  
 12 say 18 9500, and I would say, No, I want  
 13 an LT9522. And then it would go on to  
 14 the setback for an axle, and I would  
 15 say, Yes, standard location. And, of  
 16 course, that is correct. And then you  
 17 go down the entire list and then you  
 18 would check the rear axle. Instead of  
 19 40,000 pound, I want 46,000 pound.  
 20 And then you continue  
 21 on, and then he would give you a  
 22 corrected version. This primarily is on  
 23 the telephone, and he would send you a  
 24 corrected version possibly by fax.

108

1 And then you look at it  
 2 again and get into the more detailed  
 3 things like how long do you want your  
 4 glad hand lines and such, and then  
 5 finally you get -- it would just be a  
 6 couple of faxes and a lot of phone calls  
 7 to come up with the final figure.  
 8 Once you get that  
 9 settled, then he would submit it to  
 10 Sterling or Freightliner, or whatever  
 11 type of truck you are purchasing, for  
 12 his concessions and come back with a  
 13 better price than he would propose, and  
 14 then they would give the better price,  
 15 and then they would propose it to me.  
 16 Q. Is that what happened in this case with  
 17 respect to these 22 trucks?  
 18 A. Yes. But it wasn't overnight. It was  
 19 negotiations ongoing.  
 20 Q. Did Trans-Spec keep any of those line  
 21 sheets that Mr. Medbery sent to you,  
 22 whether the original one or the  
 23 corrected one, which you then used in  
 24 discussing with him the detailed



141

143

1 warranty or Caterpillar service  
2 agreement with respect to the engines in  
3 the 22 trucks?  
4 **A. In brochures, it has something that**  
5 **looks like that. It's all pretty**  
6 **colors. That actual copy looks**  
7 **different, so I couldn't say for sure if**  
8 **that's it, if it was the actual one that**  
9 **I'm picturing, but I have basically seen**  
10 **extended warranty policies before.**  
11 **Q. Other than the colors, does this**  
12 **document look like the document that you**  
13 **understood contained the warranty or the**  
14 **service coverage on the engines that**  
15 **were in the trucks that Trans-Spec**  
16 **acquired?**  
17 **A. I can't say that.**  
18 **Q. Then I repeat the question. Have you**  
19 **seen any document that was delivered to**  
20 **Trans-Spec or signed by anyone on behalf**  
21 **of Trans-Spec with respect to the**  
22 **engines in the 22 trucks that Trans-Spec**  
23 **acquired that provided warranty or**  
24 **service coverage for them?**

142

1 **A. The only one I recall is on the previous**  
2 **trucks, not this particular 22 trucks.**  
3 **I have seen them similar to that that**  
4 **did come in an envelope directly to me**  
5 **and I did sign them and return them to**  
6 **Harry Calderbank specifically. He**  
7 **obviously gave this to Andy Lind and not**  
8 **me.**  
9 **Q. When were the 22 Sterling trucks that**  
10 **are involved in this case delivered to**  
11 **Trans-Spec?**  
12 **A. In December. I think they were put**  
13 **in -- some were put in service the end**  
14 **of December and some the beginning of**  
15 **January 2000.**  
16 **Q. Were those trucks actually delivered by**  
17 **Minuteman to Trans-Spec's place of**  
18 **business at Eskow Road in Worcester?**  
19 **A. Some they delivered. Some I personally**  
20 **picked up myself.**  
21 **Q. Went down to the dealership and got**  
22 **them?**  
23 **A. Right. Drive a trade down and drive a**  
24 **new one back.**

1 **Q. When those trucks were delivered to**  
2 **Trans-Spec, were they accompanied -- was**  
3 **each truck accompanied by a Sterling**  
4 **warranty?**  
5 **A. No.**  
6 **Q. Did Trans-Spec ever receive a written**  
7 **Sterling warranty with respect to those**  
8 **trucks?**  
9 **A. I don't recall.**  
10 **Q. When those trucks were delivered to**  
11 **Trans-Spec, did Trans-Spec receive any**  
12 **documents from Sterling relating to**  
13 **them?**  
14 **A. Title.**  
15 **Q. Did it receive operators' manuals?**  
16 **A. Yes.**  
17 **Q. Did it receive parts books?**  
18 **A. No.**  
19 **Q. Did it receive maintenance manuals?**  
20 **A. No.**  
21 **Q. You say you don't recall receiving**  
22 **warranties with them?**  
23 **A. In the owner's manual, it probably said**  
24 **what the basic warranty was.**

144

1 **Q. Was there a packet in each of those**  
2 **trucks containing documents of various**  
3 **types?**  
4 **A. I don't really recall. It's possible.**  
5 **Q. When Trans-Spec received those trucks,**  
6 **did they receive an owner's manual or**  
7 **owner's and maintenance manual with**  
8 **respect to the engines?**  
9 **A. That's a good question. I really don't**  
10 **recall that.**  
11 **Q. Did it receive a parts book with respect**  
12 **to the engine?**  
13 **A. I wouldn't think so.**  
14 **Q. Do you know whether it did or not?**  
15 **A. No. It's possible, but I probably**  
16 **wouldn't see anything like that.**

17 MR. GRUNERT: Let's just  
18 mark these documents as Exhibits 5 and  
19 6.

20 (Document marked as  
21 Exhibit No. 5  
22 for identification.)  
23 (Document marked as  
24 Exhibit No. 6 for